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11
12 **UNITED STATES DISTRICT COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA**

15
16 LARRY G. PHILPOT,

17 Plaintiff,

18 v.

19
20 SEAWAVES TECHNOLOGY, LLC,

21 Defendant.

22 CASE NO. 2:18-cv-08005

23
24 **COMPLAINT FOR**
COPYRIGHT
INFRINGEMENT,
VIOLATIONS OF THE
DIGITAL MILLENIUM
COPYRIGHT ACT

25
26 JURY TRIAL DEMANDED

27
28 COMPLAINT

CASE NO. 2:18-cv-08005

COMPLAINT

2 Larry G. Philpot (“Mr. Philpot” or “Plaintiff”) complains against defendant
3 SeaWaves Technology LLC (“SeaWaves” or “Defendant”) as follows:

4 1. Mr. Philpot is a professional photographer who has taken many well-known
5 and sought-after photographs of musicians live in concert. Defendant has used
6 versions of Mr. Philpot's photographs of musicians Willie Nelson and Kenny
7 Chesney for its own commercial gain, without Mr. Philpot's permission and with the
8 photographs' copyright management information stripped. As such, Defendant is
9 liable to Mr. Philpot for damages for copyright infringement and violations of the
10 Digital Millennium Copyright Act.

JURISDICTION AND VENUE

12 2. This civil action arises under the United States Copyright Act, 17 U.S.C. §
13 101 *et seq.*, and under the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C.
14 § 1202 *et seq.* This Court has jurisdiction over this action under 28 U.S.C. § 1331,
15 17 U.S.C. § 501(a), 17 U.S.C. § 1202, and 28 U.S.C. § 1338.

16 3. This Court has personal jurisdiction over SeaWaves by virtue of the fact that
17 it transacts and does business in this District. Upon information and belief,
18 SeaWaves owns and operates popcrunch.com, a website that is registered in
19 California and maintains a mailing address in Playa Del Rey, California, and through
20 which the infringement alleged herein occurred. SeaWaves' website,
21 popcrunch.com, targets residents in this District. A substantial part of the relevant
22 events alleged in this Complaint occurred in this District.

23 4. Venue is also proper in this District pursuant to 28 U.S.C. §§ 1391(b) and
24 1400(a) because SeaWaves' website, popcrunch.com, is registered in California;
25 because SeaWaves transacts, does business, and maintains a mailing address in this
26 District; because SeaWaves' website, popcrunch.com, targets residents in this
27 District; and because a substantial part of the events or omissions giving rise to the
28 claims occurred in this District.

PARTIES

2 5. Mr. Philpot is a professional photographer whose work focuses exclusively
3 on concert events across the United States. Mr. Philpot resides in Indianapolis,
4 Indiana. Mr. Philpot's photographs of leading concert performers are known for
5 their high quality and acuity.

6 6. Defendant SeaWaves Technology LLC is a New Jersey limited liability
7 company with a business location located at 23 43rd Street, Sea Isle City, NJ 08423.

8 7. SeaWaves owns and operates a website at popcrunch.com that purports to be
9 a pop culture and entertainment website. Popcrunch.com is registered and
10 administered from a location at 7001 Vista Del Mar Lane, Playa Del Rey, CA 90293.
11 Popcrunch.com provides content online, including articles, and categorizes such
12 articles under categories such as “Celebrities,” “Pop Culture,” “Lifestyle,” and
13 “Music.” PopCrunch.com’s Privacy Policy, found at, states that it is “a SeaWaves
14 Technology ... Web site.”

FACTS COMMON TO ALL COUNTS

16 8. On October 4, 2009, Mr. Philpot took a photograph of entertainer Willie
17 Nelson in performance at Farm Aid 2009 in Saint Louis, Missouri (the “Nelson
18 Photograph”). The photograph is an original work that is copyrighted under United
19 States law and was registered with the United States Copyright Office September 5,
20 2012 with the Certificate Number VAu 1-132-411. Plaintiff’s registration is
21 attached hereto as **Exhibit A**.

22 9. Mr. Philpot has been and is the sole owner of the Nelson Photograph. The
23 Nelson Photograph was first uploaded to the Wikimedia website by Mr. Philpot on
24 or about June 1, 2011. A true and correct copy of the Nelson Photograph is attached
25 hereto as **Exhibit B**.

26 10. Mr. Philpot agreed to make the Nelson Photograph available through the
27 website Wikimedia for reproduction, distribution, public display, public
28 performance, and public digital performance of the photograph and derivative

1 works, solely under and pursuant to the terms of the Creative Commons Attribution
2 2.0 Generic license (the “CC 2.0 License”). The terms of the CC 2.0 License require
3 the licensee to keep intact all copyright notices for the work and to provide
4 attribution to the author if the work, or a derivative work, is distributed, publicly
5 displayed, publicly performed, or publicly digitally performed. Further, under the
6 terms of the CC 2.0 License, anyone who publicly displays a Derivative Work is
7 offered a license under the same terms and conditions as the original Work. Mr.
8 Philpot requires that the Nelson Photograph be attributed to him as part of the
9 license. Screenshots of the license and attribution requirements, taken on September
10 14, 2018, are attached hereto as **Exhibit C**. The requirements have been in effect
11 since the photograph was first uploaded to Wikimedia.

12 11. On information and belief, a cropped version of the Nelson Photograph
13 (“Nelson Derivative Photograph”) was created by a Wikimedia user, GDuwen, and
14 is available at:

15 https://en.wikipedia.org/wiki/File:Willie_Nelson_at_Farm_Aid_2009_-_Cropped.jpg. Under the terms of the CC 2.0 License, this constitutes a Derivative
16 Work and the same attribution requirements to Mr. Philpot that apply to the Nelson
17 Photograph apply to the Nelson Derivative Photograph. A copy of the Nelson
18 Derivative Photograph is attached hereto as **Exhibit D**.

20 12. On June 13, 2013, Mr. Philpot took a photograph of Kenny Chesney during a
21 performance in Indianapolis, Indiana (the “Chesney Photograph”). The Chesney
22 Photograph is an original work that is copyrighted under United States law and was
23 registered with the United States Copyright Office on August 15, 2013 with the
24 Certificate Number VAu 1-164-624. Plaintiff’s registration is attached hereto as
25 **Exhibit E**.

26 13. Mr. Philpot has been and is the sole owner of the Chesney Photograph. The
27 Chesney Photograph was first uploaded to the Wikimedia website by Mr. Philpot on
28

1 or about September 12, 2013. A true and correct copy of the Chesney Photograph
2 is attached hereto as **Exhibit F**.

3 14. Mr. Philpot has made the Chesney Photograph available through the website
4 Wikimedia for reproduction, distribution, public display, public performance, and
5 public digital performance of the photograph and derivative works, solely under and
6 pursuant to the terms of the Creative Commons Attribution-ShareAlike 3.0 Unported
7 license (the “CC License”). The terms of the CC License require the licensee to give
8 appropriate credit, provide a link to the license, and indicate if changes were made.
9 Only when these terms are met may a licensee copy and redistribute the material in
10 any medium or format and/or remix, transform, and build upon the material for any
11 purpose, even commercially. This license requires that the photographs be attributed
12 to Mr. Philpot. Screenshots of the license and attribution requirements taken on
13 September 10, 2018, are attached as **Exhibit G**.

14 15. On the Wikimedia website, the Nelson, Nelson Derivative, and Chesney
15 Photographs all contain copyright management information (CMI), including
16 metadata, which indicate that Mr. Philpot is the author of the Nelson and Chesney
17 Photographs, that Mr. Philpot is the “creator” Nelson Derivative Photograph, that
18 the Nelson, Nelson Derivative, and Chesney Photographs must be attributed to Mr.
19 Philpot, and that Nelson and Chesney Photographs are copyrighted by Mr. Philpot.

20 16. SeaWaves has reproduced, publicly displayed, and publicly distributed the
21 Nelson Derivative and Chesney Photographs on its popcrunch.com website without
22 authorization or proper attribution as required under the terms of the applicable
23 license(s).

24 17. SeaWaves’ reproduction, public display, and public distribution of the Nelson
25 Derivative Photograph is still available online and can be found at the following
26 URL: <http://www.popcrunch.com/44-a-list-celebrities-who-served-in-the-military/>.
27 The publication of the Nelson Derivative Photograph on this website was first
28

1 discovered by Mr. Philpot within the three years prior to the filing of this complaint.

2 A screen shot of this website is attached hereto as **Exhibit H**.

3 18. SeaWaves' reproduction, public display, and public distribution of the
4 Chesney Photograph is still available online and can be found at the following URL:
5 <http://www.popcrunch.com/kenny-chesney-and-costa-sunglasses-to-team-up-for-st-john-river-trust/>. The publication of the Chesney Photograph on this website was
6 first discovered by Mr. Philpot within the three years prior to the filing of this
7 complaint. A screen shot of this website is attached hereto as **Exhibit I**.

8 19. Despite having no permission, consent, or license to do so, SeaWaves has, for
9 commercial gain and purpose, reproduced, distributed, and publicly displayed the
10 Nelson Derivative and Chesney Photographs. SeaWaves has publicly displayed and
11 has also made available, specifically for advertising, third party distribution, display
12 and public and sharing the Nelson Derivative and Chesney Photographs with the
13 DMCA Copyright management information and metadata stripped from all versions
14 of the photos.

15 20. On December 5, 2015, Mr. Philpot, sent a sent a cease and desist letter to
16 SeaWaves at its Playa Del Rey, California address. The letter informed SeaWaves
17 of its infringement of the Chesney Photograph and asked SeaWaves to obtain a
18 license to use the photograph. To date, SeaWaves has not responded to the letter,
19 and has not removed the Chesney Photograph from its website. A copy of the cease
20 and desist letter is attached hereto as **Exhibit J**.

21 21. On September 18, 2017, Mr. Philpot, through counsel, sent a cease and desist
22 letter to SeaWaves at its Playa Del Rey, California address. The letter informed
23 SeaWaves of its infringement of the Nelson Photograph and asked SeaWaves to
24 either remove the photograph, or to give Mr. Philpot proper attribution as required
25 by law. To date, SeaWaves has not responded to the letter, and has not removed the
26 Nelson Derivative Photograph from its website. A copy of the cease and desist letter
27 is attached hereto as **Exhibit K**.

FIRST CLAIM FOR RELIEF
Copyright Infringement, 17 U.S.C. § 501

3 22. Plaintiff incorporates herein by reference the allegations in paragraphs 1
4 through 20, above.

5 23. Mr. Philpot is the owner of all rights, title, and interest in the copyrights to the
6 Nelson and Chesney Photographs, which consist of material wholly original with
7 Plaintiff and which are copyrighted subject matter under the laws of the United
8 States. Mr. Philpot has complied in all respects with the Copyright Act and all of
9 the laws of the United States governing copyrights. The Nelson and Chesney
10 Photographs have been timely registered with the United States Copyright Office,
11 including for purposes of Plaintiff's recovery of attorneys' fees and statutory
12 damages.

13 24. Defendant has directly infringed Mr. Philpot's copyrights in the Nelson and
14 Chesney Photographs by using the Nelson Derivative and Chesney Photographs on
15 the popcrunch.com website, thus reproducing, displaying publicly, and distributing
16 to the public the photographs for purposes of trade in violation of 17 U.S.C. § 501
17 *et seq.*, without attributing the photographs to Mr. Philpot and on information and
18 belief, after removing and/or altering the photographs' identifying copyright
19 management information, including metadata, and/or having knowledge of its
20 removal and/or alteration.

21 25. On information and belief, Defendant has willfully infringed Mr. Philpot's
22 copyrights in the Nelson and Chesney Photographs by using the Nelson Derivative
23 and Chesney Photographs on the popcrunch.com website with knowledge that the
24 photographs were protected by copyright and without attributing the photographs to
25 Mr. Philpot, after taking the photographs from Wikimedia and/or other online
26 locations which included copyright management information, including metadata,
27 and removing and/or altering the copyright management information and/or having
28 knowledge of its removal and/or alteration.

1 26. As a result of Defendant's acts of copyright infringement as alleged herein,
2 Plaintiff has suffered substantial damages in an amount to be established at trial.

3 27. As a result of Defendant's acts of copyright infringement as alleged herein,
4 Defendant has obtained direct and indirect profits it would not otherwise have
5 realized but for its infringements. As such, Plaintiff is entitled to disgorgement of
6 Defendant's profits directly and indirectly attributable to Defendant's infringements,
7 in an amount to be established at trial.

8 28. Plaintiff is informed and believes and thereon alleges that Defendant has
9 committed the acts of copyright infringement alleged herein with actual knowledge
10 or reckless conduct, thus acting in disregard to Plaintiff's rights such that Plaintiff is
11 entitled to a finding of willful infringement and enhanced damages.

12 **SECOND CLAIM FOR RELIEF**

13 **For Violations of the Digital Millennium Copyright Act,**

14 **17 U.S.C. §§ 1202 and 1203**

15 29. Plaintiff incorporates here by reference the allegations in paragraphs 1
16 through 27 above.

17 30. Plaintiff is informed and believes and thereon alleges that Defendant violated
18 17 U.S.C. §1202 et seq. by intentionally removing or altering the Nelson Derivative
19 and Chesney Photographs' identifying metadata and copyright management
20 information without the authority of Plaintiff or the law, and/or by distributing the
21 photograph with the identifying metadata and copyright management information
22 removed and/or altered, knowing the same had been removed or altered without the
23 authority of Plaintiff or the law, knowing or having reasonable grounds to know that
24 such actions would induce, enable, facilitate, or conceal an infringement of
25 Plaintiff's rights.

26 31. Specifically, Plaintiff is informed and believes, and thereon alleges, that
27 Defendant took the Nelson Derivative and Chesney Photographs from Wikimedia
28 and/or other online locations which included metadata identifying Plaintiff as the

1 photographer and owner, and without the authority of Plaintiff or the law, removed
2 and/or altered that rights management information, and/or that Defendant took the
3 Nelson Derivative and Chesney Photographs knowing that the copyright
4 management information had been removed and/or altered without the authority of
5 Plaintiff or the law, and used the photographs on its website knowing, or having
6 reasonable grounds to know, that it would induce, enable, facilitate, or conceal an
7 infringement of Plaintiff's rights, and in addition by failing to remove or attribute
8 the Nelson Derivative and Chesney Photographs after receiving Mr. Philpot's cease
9 and desist letters.

10 32. Plaintiff is informed and believes and thereon alleges that Defendant further
11 violated 17 U.S.C. §1202 et seq. by knowingly and with the intent to induce, enable,
12 facilitate, or conceal infringement, providing copyright management information
13 that is false and distributing copyright management information that is false, by
14 failing to attribute the photographs to Plaintiff.

15 33. The above conduct is in violation of the Digital Millennium Copyright Act
16 and exposes Defendant to additional and enhanced common law and statutory
17 damages and penalties, including in the form of Plaintiff's costs and attorneys' fees.

18 34. Plaintiff is informed and believes and thereon alleges that Defendant's
19 conduct as alleged herein was willful, reckless, and/or with knowledge, and that
20 Defendant acted knowing, or, with respect to civil remedies under section 1203,
21 having reasonable grounds to know, that its actions would induce, enable, facilitate,
22 or conceal an infringement of any right under this title, and that Defendant also acted
23 knowingly and with the intent to induce, enable, facilitate, or conceal infringement,
24 so that Plaintiff is entitled to seek enhanced damages and penalties.

25 35. As a result of Defendant's actions, Plaintiff has suffered substantial damages
26 in an amount to be established at trial.

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1 36. As a result of Defendant's actions, Defendant has obtained direct and indirect
2 profits it would not otherwise have realized. Plaintiff is entitled to disgorgement of
3 Defendant's profits, in an amount to be established at trial.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff requests judgment against Defendant as follows:

- 6 a. That Defendant and its respective agents and employees and those acting
7 in concert with them be enjoined from infringing Plaintiff's copyrights in
8 any manner;
- 9 b. That Plaintiff be awarded all profits of Defendant, plus all losses of
10 Plaintiff, plus any other monetary advantage gained by Defendant through
11 its infringement, the exact sum to be proven at the time of trial, or, if
12 elected before final judgment, statutory damages under the Copyright Act,
13 17 U.S.C. § 101 et seq.;
- 14 c. That Plaintiff be awarded damages for Defendant's violations of 17 U.S.C.
15 § 1202, including all available damages under 17 U.S.C. § 1203;
- 16 d. That Plaintiff be awarded its attorneys' fees as available under the
17 Copyright Act 17 U.S.C. § 101 et seq.;
- 18 e. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 19 f. That Plaintiff be awarded the costs of this action; and
- 20 g. That Plaintiff be awarded such further legal and equitable relief as the
21 Court deems proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff Larry G. Philpot hereby demands trial by jury of all issues so triable
24 under the law.

25
26 Respectfully submitted,
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Dated: September 14, 2018

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